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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations,  
(Athens, Ohio)

) MM Docket No. 93-165

) RM-8247

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION**

David A. Ringer ("Ringer"), by and through counsel, and pursuant to §1.429(g) of the Commission's Rules (47 C.F.R. §1.429g), hereby submits his Reply to the "Opposition To Petitions For Reconsideration" of Nelsonville TV Cable, Inc. ("Nelsonville"),<sup>1</sup> in the above-captioned rulemaking proceeding.<sup>2</sup> In support whereof, the following is shown:

1. On December 5, 1994, Mr. Ringer filed a Petition For Reconsideration and Motion For Stay challenging the Commission's Order, FCC DA 94-1270, released November 23, 1994 ("Order"), which re-opened the Athens filing window for Channel 240A. In its Order, the Commission stated that it was opening a new window filing period for Athens because the earlier window had been suspended. The Commission stated that it had suspended all FM windows when it issued its Public Notice freezing

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<sup>1</sup> The Opposition is directed at the separate Petitions For Reconsideration filed by Mr. Ringer and Lakeside Broadcasting, Inc.

<sup>2</sup> Pursuant to §1.4 and 1.429(g) of the Commission's rules, this Reply is timely-filed within 10 days of Nelsonville's Opposition, plus three additional days for mail service, or by February 16, 1995.

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comparative proceedings on February 25, 1994. See Public Notice, FCC 94-41, released February 25, 1995 ("February 25th Public Notice").

2. In his Petition For Reconsideration, Mr. Ringer argued that the Commission's February 25th Public Notice failed to provide notice that the Commission was suspending the Athens window. Mr. Ringer argued that the February 25th Public Notice was never published in the Federal Register and, therefore, it did not provide the notice required by the Administrative Procedures Act. More importantly, Mr. Ringer demonstrated that the text of the February 25th Public Notice was confusing and that actual notice was never given that the Commission was suspending the Athens window. As such, Mr. Ringer concluded that the Athens window was never suspended and the opportunity for filing applications for the new Athens allotment had passed. Mr. Ringer argued that there was no justification for opening a second Athens window and that the Commission's second window filing period should be stayed, pending resolution of Mr. Ringer's Petition For Reconsideration. Shortly after Mr. Ringer filed these pleadings, the Commission's Audio Services Division returned his Athens application. Mr. Ringer has appealed that action.

3. In its Opposition, Nelsonville argues that the Commission's failure to publish the February 25th Public Notice in the Federal Register was inconsequential, since Mr. Ringer "clearly had actual notice of the Freeze Order" and "the Freeze Order's intent is quite clear on its face." Opposition at pp. 2 and 4. However, Mr. Ringer has shown that just the opposite was true. The language of the February 25th Public Notice was so confusing that Mr. Ringer could not have had actual notice of

the Commission's intended action. As demonstrated more fully in Mr. Ringer's Petition For Reconsideration, the February 25th Public Notice did not state that FM windows were suspended and its language was so confusing that the general public, as well as communications attorneys and the FCC's own staff, were unclear on the impact the February 25th Public Notice. Without a more clear pronouncement, the release of the February 25th Public Notice could not have served to suspend the Athens window. Therefore, the Athens window was completed and there is no justification to open a second window at this time.

4. Nelsonville's argument with respect to harm is also not availing. Nelsonville admits that it could have filed an application in the earlier Athens window but chose not to because it believed that the window was suspended. In essence, Nelsonville gambled that there would be another window filing period and withheld the filing of its application. As it turns out, Nelsonville's gamble was a bad one - for the Athens window was not suspended and closed with a number of applications having been received. Nelsonville voluntarily assumed the risk that its reading of the Commission's February 25th Public Notice would be correct. Now that Mr. Ringer has shown that Nelsonville's interpretation was incorrect and that the Athens window was not suspended, Nelsonville's attempt to create another opportunity to file for the new Athens allotment should be denied.

5. Nelsonville has not shown why the Commission's should open a second window for Athens. Nelsonville has failed to show that the language of the February 25th Public Notice was clear enough to provide actual notice that the Athens window was suspended. Similarly, Nelsonville has not demonstrated why it should be allowed

to file an application for Athens when the window filing period for this market has long since passed. Therefore, Mr. Ringer once again respectfully submits that the Commission should rescind its Order opening the second Athens window filing period and process only those applications it received in the previous Athens window.

Respectfully submitted,

**DAVID A. RINGER**

By:



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February 15, 1995

**CERTIFICATE OF SERVICE**

I, K. Dale Harris, a legal assistant in the law firm of Smithwick & Belendiuk, P.C., certify that on this 15th day of February, 1995, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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K. Dale Harris